

### **Remarks**

The Examiner has rejected Claims 1, 15-22, 24-27 and 77-80, and has allowed Claims 62, 68, 70, 75 and 81-87. Applicant has amended Claims 1 and 85-87, and cancelled Claim 77 based on its redundancy without prejudice. No new matter has been introduced. Reconsideration and allowance are respectfully solicited.

#### **I. Claim Objection**

Claim 85 has been objected to as being dependent upon itself. Applicant has corrected the dependency of the claim. Applicant requests the objection to be withdrawn.

#### **II. Rejection of claims under 35 U.S.C 103(a)**

Claims 1, 15-22, 24-27, and 78-80 have been rejected under 35 U.S.C. 103(a) as being obvious over Prutchi et al. (US Patent 5730125) in view of Chance et al. (US Patent 5954053). Applicant respectfully traverses the rejection and request reconsideration.

Claim 1 as now amended is drawn to a system that corresponds to the method claim 84 that is allowed. Applicant believes that Claim 1 is now in condition for allowance also.

Examiner contends that Prutchi et al. in column 11, lines 11 -27 teaches the Applicant's comparison of the oxygenation. Prutchi specifically in the cited passage indicates "The optical signal 77a detected by photodetector 76a may be compared by microprocessor 66 (FIG. 3) to optical signal 77b detected by photodetector 76b for

each. Through this comparison, the effects that movement of the pacer 12 would otherwise have on the sensed signals can be eliminated.”

Therefore, Prutchi merely compares the detected optical signals 77a and 77b and does not compare two different oxygenations as included in the Applicant's processing system of Claim 1. The Applicant's processing system based on the results of the comparison between the oxygenations further determines whether the condition of the transplanted tissue is normal.

The Examiner further relies on Chance to remedy the deficiencies of Prutchi et al. The Examiner contends that Chance teaches a system for sensing the oxygenation of two different tissues using separate sensing systems that compares the oxygenation measurements to determine the condition of one area with respect to the other (column 26, lines 4-60), in order to determine the state of the measured tissues (OA page 2, lines 20-21, and OA page 3, lines 1-6). Applicant respectfully disagrees.

Chance et al. disclose a system for the differential measurement of Radiation, not oxygenation, that pass between two source-detector pairs placed on one or two locations of the same tissue to determine the physiological or pathophysiological changes of the tissue (abstract).

Chance et al. specifically disclose a differential spectrophotometer system for in vivo examination of a tissue by measuring changes in electromagnetic radiation migrated in a path of two localized tissues of interest (Abstract and column 26, lines 5-8). The system includes a control circuit module 274, and two sensor modules 271 and 272 each comprising at least one source and detector as shown in FIGS. 5 to 8c, 22, 23

(column 26, lines 27-33). The two detectors, placed at a first and second location on the exterior of the head 273, are simultaneously detecting radiation that migrated along the banana-shaped paths in the two brain hemispheres (column 26, lines 47-50). The system processes the radiation signals of the two detectors and evaluates the processed data to determine whether the radiation migrated in a tissue of abnormal physiological or pathophysiological properties (abstract and column 26, lines 57-60). In addition, the system disclosed by Chance et al. rely on the differential comparison of radiation passing through normal and abnormal tissue of the same type (column 26, lines 17-26).

Claim 1 of the present invention recites: a processing system in communication with the first and second sensing systems configured to compare the oxygenation sensed by the first and the second sensing systems, and to determine based on the comparison whether the condition of the transplanted tissue is normal. Chance et al. do not compare the oxygenation sensed by the first and the second sensing systems as claimed by Applicant. Furthermore, Claim 1 relies on the comparison of the oxygenation between two different types of tissues: one being transplanted and the other being native to the body. On the other hand, the system disclosed by Chance et al. relies on the differential comparison of radiation passing through an abnormal portion versus a normal portion of the same type of tissue (column 26, lines 17-26).

Therefore, neither Prutchi et al. nor Chance et al. by themselves or in combination teach each and every feature and element of the claims as required under 35 U.S.C. 103(a). Applicant requests reconsideration and believe Claim 1 is in condition for allowance.

Claims 15-19, 21, 22, 27, and 78-80 depend from Claim 1 and are allowable for the same reasons as discussed above with respect to Claim 1. Claim 77 has been cancelled.

**III. Allowable Subject Matter**

Examiner has allowed Claims 62, 68, 70, 75 and 81-87. Applicant thanks Examiner.


**IV. Conclusion**

The Applicant submits that the above amendment and remarks place this application in condition for allowance, which the Applicant respectfully solicits.

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Respectfully submitted,

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